IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.211 OF 2007
IN
ARBITRATION PETITION NO.548 OF 2004

M/s. Chandan Builders .... Appellant
Vs.
Union of India & Anr. .... Respondents

Sarvasri R.G. Ketkar with R.M. Pethe for the Appellant.

Shri S.R. Rajguru for the Respondent-Union.

CORAM: R.M.S. KHANDEPARKAR &
D.G. KARNIK, JJ.

DATED: APRIL 10, 2007

P.C:

1. Heard. The appellant challenges the order dated 6-9-2005 passed by learned single Judge in Arbitration Petition No.548 of 2004. By the impugned order, the learned single Judge has set aside the award dated 7-7-1997 in relation to claim Nos.1 and 12 of the award. The claim No.1 related to the claim of an amount of Rs.74,800/- on account of the area wherein the work was to be carried out was changed from unrestricted area to restricted area during the period during which the work was to be carried out by the appellant, and the claim No.12 related to the claim of an amount of Rs.1,23,375/- on account of the alleged loss suffered by the appellant on account of delay in giving decision on the water

proofing treatment. The learned single Judge, as regards both the claims, has clearly held that the learned arbitrator misconducted himself in awarding compensation on both these heads in the absence of any evidence being led by the appellant. As regards the claim No.12, it has also been observed by the learned single Judge that the learned arbitrator had recorded finding that there was abnormal delay in deciding the type of water proofing treatment to be employed and not the water proofing agency through whom the work was to be carried out and it was claimed to be the cause for the loss to the appellant. The finding being contrary to the pleadings and in the absence of proof, the same has been set aside by the learned single Judge.

2. While assailing the impugned order, it was sought to be argued on behalf of the appellant that the award in relation to the claim No.1 was not challenged by the respondents on the ground of absence of evidence on record and therefore the learned single Judge could not have interfered in the award on the said ground and in that regard attention is drawn to Section 30 of the Arbitration Act, 1940. At the outset, it is to be noted that the appeal memo in the present appeal nowhere discloses any such ground having been taken by the appellant to assail the impugned order. That apart, the petition which was filed before the learned single Judge

undoubtedly discloses challenge to the grant of the claim No.1 by the respondents, though the said ground does not disclose in so many terms as having been challenged on account of absence of evidence, it undoubtedly, discloses misconduct on the part of the learned arbitrator in allowing the said claim in the facts and circumstances of the case. The Section 30 of the Arbitration Act, 1940 clearly provides that an award can be set aside when the arbitrator misconducts himself in the proceedings and certainly grant of claim of the claimant without the claimant having placed any evidence in support of the claim would amount to misconduct on the part of the arbitrator. The law on this point is well-settled.

3. Once it was found that the records did not disclose any evidence having been led by the claimant in support of the claim Nos.1 and 12, one fails to understand how the learned arbitrator could have arrived at the quantification of sum of Rs.74,800/- in relation to the claim No.1 and a sum of Rs.1,23,375/- in relation to the delay in giving the decision regarding the water proofing treatment. In relation to the claimant’s contention about the loss on account of certain acts on the part of the respondent, it was necessary for the claimant to lead appropriate evidence in that regard to substantiate his claim. Having failed to do so, no

fault can be found with the impugned order setting aside the award so far as it related to the claim Nos.1 and 12. The award by the arbitral Tribunal in that regard was totally contrary to the materials on record. Hence, there is no case for interference in the impugned order. The appeal, therefore, is dismissed.

(D.G.Karnik, J.) (R.M.S.Khandeparkar, J.)

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